

Clerk's note: A typographical error on page 11, line 165 has been corrected by removing the underline formatting from the period; the period was in the existing text.

CORRECTED

Ordinance No.: 19-17

Zoning Text Amendment No.: 19-07

Concerning: Telecommunications
Towers – Limited Use

Draft No. & Date: 7 – 7/15/2021

Introduced: October 1, 2019

Public Hearing: November 19, 2019

Adopted: July 27, 2021

Effective: August 16, 2021

**COUNTY COUNCIL FOR MONTGOMERY COUNTY, MARYLAND
SITTING AS THE DISTRICT COUNCIL FOR THAT PORTION OF
THE MARYLAND-WASHINGTON REGIONAL DISTRICT WITHIN
MONTGOMERY COUNTY, MARYLAND**

Lead Sponsor: Councilmember Riemer
Co-Sponsors: Councilmembers Alborno and Rice

AN AMENDMENT to the Montgomery County Zoning Ordinance to:

- allow certain telecommunications towers as a limited or conditional use in certain residential zones;
- revise the standards for telecommunications towers allowed as a limited or conditional use;
- revise the conditional use findings required for the replacement of a pre-existing pole; and
- generally amend use requirements to address certain telecommunications towers.

By amending the following sections of the Montgomery County Zoning Ordinance, Chapter 59 of the Montgomery County Code:

DIVISION 3.1. "Use Table"
Section 3.1.6. "Use Table"
DIVISION 3.5. "Commercial Uses"
Section 3.5.2. "Communication Facility"
DIVISION 7.3. "Regulatory Approvals"
Section 7.3.1. "Conditional Use"

EXPLANATION: ***Boldface** indicates a Heading or a defined term.*
Underlining indicates text that is added to existing law by the original text amendment.
[Single boldface brackets] indicate text that is deleted from existing law by original text amendment.
Double underlining indicates text that is added to the text amendment by amendment.
[[Double boldface brackets]] indicate text that is deleted from the text amendment by amendment.
** * * indicates existing law unaffected by the text amendment.*

OPINION

Zoning Text Amendment (ZTA) 19-07, lead sponsor Councilmember Riemer, co-sponsors Councilmembers Alborno and Rice, was introduced on October 1, 2019.

ZTA 19-07 will allow certain telecommunications towers as a limited or conditional use in certain residential zones; revise the standards for telecommunications towers allowed as a limited or conditional use; revise the conditional use findings required for the replacement of a pre-existing pole; and amend the use requirements to address certain telecommunications towers.

In its report to the Council, the Planning Board recommended approval of ZTA 19-07 with amendments to increase Planning staff involvement, clarification of volume and height measurements, and the timing of applications for consolidated processing.

The Council’s public hearing was on November 19, 2019. Most of the public testimony was in opposition and expressed concerns about RF emissions, Planning Staff involvement, lack of notice and public participation, post-construction inspection, the Tower Committee, an increase in energy use, a reduction in property values, and the effect on minority communities. Testimony in support refuted the claims about health effects and supported better broadband coverage in the County. Some testimony was generally in support but expressed concern that it was still too restrictive in light of the FCC Order. The Council also received significant written testimony in the years between introduction of ZTA 19-07 and its adoption.

The Council referred the text amendment to the Planning, Housing, and Economic Development (PHED) Committee for review and recommendation. The PHED Committee held worksessions on January 23, 2020; February 10, 2021; and March 10, 2021. The PHED Committee recommended approval of ZTA 19-07 with several amendments. Those amendments were:

- Reduce the setback for a limited use from 60 feet to 30 feet (3-0);
- Modified conditional use process for all poles under the 30-foot setback (3-0);
- A “waiver and objection” process for a height up to 50 feet where other limited use setback requirements are met (3-0);
- A “waiver and objection” process for all new poles (2-1);

- Under the “waiver and objection” process, for notice to be sent to all property owners and civic associations within 300 feet; and for standing for objections to be limited to those within 300 feet (3-0); and
- Pole proliferation language—that a small wireless facility should not be located within 150 feet of a facility occupied or controlled by the same carrier (3-0).

The full Council had worksessions on June 29, 2021; July 13, 2021; and July 20, 2021. During the worksessions, the Council discussed but did not approve amendments proposed by Councilmember Katz and Council President Hucker that used a tier approach to setbacks based on speed limit and the type of road, respectively. The Council approved various amendments proposed by Councilmembers Friedson, Navarro, Reimer, and Rice. These amendments addressed tree loss minimization, pole proliferation, preferential placement, and height.

For these reasons, and because to approve this amendment will assist in the coordinated, comprehensive, adjusted, and systematic development of the Maryland-Washington Regional District located in Montgomery County, Zoning Text Amendment No. 19-07 will be approved as amended.

ORDINANCE

The County Council for Montgomery County, Maryland, sitting as the District Council for that portion of the Maryland-Washington Regional District in Montgomery County, Maryland, approves the following ordinance:

8 **Sec. 2. DIVISION 59-3.5 is amended as follows:**

9 **DIVISION 3.5. Commercial Uses**

10 * * *

11 **Section 3.5.2. Communication Facility**

12 * * *

13 C. Telecommunications Tower

14 * * *

15 2. Use Standards

16 * * *

17 b. [In the Commercial/Residential, Industrial, and Employment
18 zones, where] Where a Telecommunications Tower is allowed
19 as a limited use and the tower would replace a pre-existing
20 utility pole, streetlight pole, or site plan approved parking lot
21 light pole, the tower is allowed if it satisfies the following
22 standards:

23 i. Any building permit application to the Department of
24 Permitting Services [[concerning]] for the construction of
25 a Telecommunications Tower must include a
26 recommendation from the Transmission Facility
27 Coordinating group issued within 90 days of the
28 submission of the building permit application.

29 ii. In the Commercial/Residential, Industrial, and
30 Employment zones, the pre-existing pole and the
31 replacement tower must be at least 10 feet from an
32 existing building, excluding any setback encroachments
33 allowed under Section 4.1.7.B.5.

- 34 iii. In the Agricultural, Rural Residential, and Residential
35 zones, the pre-existing pole and the replacement tower
36 must be at least ~~[[60]] 30~~ feet from any building intended
37 for human occupation, excluding any setback
38 encroachments allowed under Section 4.1.7.B.5.
- 39 [i]iv. Antennas must comply with the Antenna Classification
40 Standard A under Section 59.3.5.2.C.1.b, be concealed
41 within an enclosure the same color as the pole, be
42 installed at a minimum height of 15 feet, and be installed
43 parallel with the tower.
- 44 [ii]v. A replacement ~~[[The]]~~ tower must be located:
- 45 (a) within 2 feet of the base of a pre-existing pole and
46 at the same distance from the curb line, or edge of
47 travel lane in an open section, as the pre-existing
48 pole in a public right-of-way;
- 49 [(b)] at least 10 feet from an existing building;]
- 50 [(c)](b) outside of the roadway clear zone as
51 determined by the Department of Permitting
52 Services;
- 53 [(d)](c) in a manner that allows for adequate sight
54 distances as determined by the Department of
55 Permitting Services; ~~[[and]]~~
- 56 [(e)](d) in a manner that complies with streetlight
57 maintenance requirements as determined by the
58 Department of Transportation~~[[.]]~~;
- 59 (e) at least 150 feet from the nearest antenna occupied
60 or controlled by the same carrier; and

61 (f) whenever it is legally and technically feasible,
62 replacement poles should replace pre-existing poles
63 that are located closest to intersections, closest to
64 property lines between dwellings, along the non-
65 front-facing side of residential properties, or along
66 abutting properties used for a non-residential
67 purpose. In addition, the replacement towers must
68 be at least 5 feet from the area between two parallel
69 lines extending from the sides of a residential front
70 door. If the applicant cannot meet the foregoing
71 standards, the applicant must include in their
72 application an affidavit proving that either
73 permission from the pole owner cannot be obtained
74 or service cannot be provided using a pole at an
75 alternate location.

76 [iii]vi. A pre-existing streetlight or parking lot light pole must be
77 removed within 10 business days after power is activated
78 to the replacement tower, and a pre-existing utility pole
79 must be removed within 180 days after a replacement
80 utility pole is installed.

81 [iv]vii. The height of the tower, including any attached
82 antennas and equipment, must not exceed:

83 (a) in the Commercial/Residential, Industrial, and
84 Employment zones, for streetlights, the height of
85 the pole that is being replaced or the height of the
86 tallest streetlight pole within 50 feet, whichever is
87 greater:

- 88 (1) plus 6 feet when abutting a right-of-way
89 with a paved section width of 65 feet or less;
90 or
91 (2) plus 15 feet when abutting a right-of-way
92 with a paved section width greater than 65
93 feet[.];

94 (b) in the Agricultural, Rural Residential, and
95 Residential zones, for streetlights, the height of the
96 pole that is being replaced:

- 97 (1) plus 6 feet when abutting a right-of-way
98 with a paved section width of 65 feet or less,
99 or up to 25 feet where the height of the pole
100 being replaced is less than 20 feet tall,
101 whichever is greater; or
102 (2) plus 15 feet when abutting a right-of-way
103 with a paved section width greater than 65
104 feet; and

105 [(b)](c) for utility poles and parking lot lights, the
106 height of the pre-existing utility or parking lot light
107 pole plus 10 feet.

108 [v]viii. The tower must be the same color as the pre-
109 existing pole.

110 [vi.]ix. The tower must have no exterior wiring, except
111 that exterior wiring may be enclosed in shielded conduit
112 on wooden or utility poles.

113 [vii]x. Any equipment cabinet:

- 114 (a) must not exceed a maximum volume of 12 cubic
 115 feet;
- 116 (b) if used to support antennas on a replacement
 117 streetlight pole, must be installed in the
 118 Telecommunications Tower base or at ground
 119 level, unless this requirement is waived by the
 120 Department of Transportation;
- 121 (c) must be the same color or pattern as the pre-
 122 existing tower[, except as provided in Section
 123 59.3.5.2.C.2.b.vii(d)] except as provided in
 124 Section 3.5.2.C.b.x(d); and
- 125 (d) may be a stealth design approved for safety by the
 126 Department of Transportation.
- 127 [viii]xi. The tower must include a replacement streetlight,
 128 if a streetlight existed on the pre-existing pole.
- 129 [ix]xii. The design of a replacement tower located in a
 130 public right-of-way, including the footer and the
 131 replacement streetlight, must be approved by the
 132 Department of Transportation.
- 133 [x]xiii. The noise level of any [fans] equipment must
 134 comply with Chapter 31B.
- 135 [xi]xiv. Signs or illumination [on the antennas or support
 136 structure], except a streetlight, on the antennas or support
 137 structure are prohibited unless required by the Federal
 138 Communications Commission or the County.
- 139 [xii]xv. The owner of the tower [or the antenna attached to
 140 the tower] must maintain [[their]] the tower[.]. The

141 owner of the antenna must maintain the [antennas,]
142 antenna and equipment in a safe condition[.]. Both
143 owners must remove graffiti[,] and repair damage [[from
144 their]] to the facility.

145 [xiii] xvi. If a tower does not have a streetlight, the tower
146 must be removed at the [cost] expense of the owner of
147 the tower when the tower is no longer in use for more
148 than 12 months. Any antenna and equipment must be
149 removed at the [cost] expense of the owner of the
150 antenna and equipment when the [antennas] antenna and
151 equipment are no longer in use for more than 12 months.
152 The [Telecommunications] Transmission [Facilities]
153 Facility Coordinating Group must be notified within 30
154 days of the removal.

155 c. Where a Telecommunications Tower is allowed as a conditional
156 use, it may be permitted by the Hearing Examiner under
157 [Section 3.5.2.C.2.a, limited use standards, Section 7.3.1,
158 Conditional Use,] either [[Subsection]] Section 3.5.2.C.2.d or
159 [[Subsection]] Section 3.5.2.C.2.a, limited use standards. In
160 addition, Section 7.3.1 and the following procedures and
161 standards must be satisfied:

162 i. Before the Hearing Examiner approves any conditional
163 use for a Telecommunications Tower, the proposed
164 facility must be reviewed by the [County] Transmission
165 Facility Coordinating Group. The applicant for a
166 conditional use must file a recommendation from the
167 Transmission Facility Coordinating Group with the
168 Hearing Examiner at least 5 days before the date set for
169 the public hearing. The recommendation must be no
170 more than 90 days old when the conditional use
171 application is accepted.

172 * * *

173 d. In the Agricultural, Rural Residential, and Residential zones,
174 where a Telecommunications Tower [[that is proposed to be
175 less than 50 feet in height does not meet the limited use
176 standards under Subsection 3.5.2.C.2.a]] is proposed to be less
177 than 30 feet from any building intended for human occupation,
178 excluding any setback encroachments allowed under Section
179 4.1.7.B.5, it may be permitted by the Hearing Examiner as a
180 conditional use without regard to Section 7.3.1 only if the
181 following procedures and standards are satisfied:

182 i. An application must include:
183 (a) the subject property's ownership and, if the
184 applicant is not the owner, authorization by the
185 owner to file the application;
186 (b) fees as approved by the District Council;
187 (c) a statement of how the proposed development
188 satisfies the criteria to grant the application;

- 189 (d) a certified copy of the official zoning vicinity map
190 showing the area within at least 1,000 feet
191 surrounding the subject property;
- 192 (e) a written description of operational features of the
193 proposed use;
- 194 (f) plans showing existing buildings, structures,
195 rights-of-way, tree coverage, vegetation, historic
196 resources, and the location and design of
197 streetlights, utilities, or parking lot poles within
198 300 feet of the proposed location;
- 199 (g) a list of all property owners, homeowners
200 associations, civic associations, condominium
201 associations, and renter associations within 300
202 feet of the proposed tower;
- 203 (h) plans showing height and architectural design of
204 the tower and cabinets, including color materials,
205 and any proposed landscaping and lighting;
- 206 (i) photograph simulations with a direct view of the
207 tower and site from at least 3 directions;
- 208 (j) at least one alternative site that maximizes the
209 setback from any building intended for human
210 occupation or reduces the height of the proposed
211 tower.
- 212 ii. Before the Hearing Examiner reviews any conditional
213 use for a Telecommunications Tower, the proposed
214 facility must be reviewed by the Transmission Facility
215 Coordinating Group. The Transmission Facility

216 Coordinating Group must [[declare whether the
 217 application is complete,]] verify the information in the
 218 draft application[[,]] and must issue a recommendation
 219 within 20 days of accepting a complete
 220 Telecommunications Tower application. The applicant
 221 for a conditional use must file a complete copy of the
 222 recommendation from the Transmission Facility
 223 Coordinating Group with the Hearing Examiner at least
 224 [[30]] 5 days before the date set for the public hearing.
 225 The Transmission Facility Coordinating Group
 226 recommendation must have been made within 90 days of
 227 its submission to the Hearing Examiner.

228 iii. Upon receipt of the Transmission Facility Coordinating
 229 Group recommendation, the applicant must submit an
 230 initial application to the Planning Director for approval
 231 of completeness, under Section 7.3.1.B.3. The Planning
 232 Director must review the application for completeness
 233 within 10 days after receipt.

234 [[iii]]iv. The Hearing Examiner must schedule a public
 235 hearing to begin within 30 days after the date a complete
 236 application is accepted by the Hearing Examiner.

237 (a) Within 10 days of when an application is accepted,
 238 the Office of Zoning and Administrative Hearings
 239 must notify the municipality where the proposed
 240 tower will be located, as well as all property
 241 owners, homeowners associations, civic
 242 associations, condominium associations, and renter

243 associations within 300 feet of the [[application]]
244 proposed tower of:

- 245 (1) the filed application;
- 246 (2) the hearing date; and
- 247 (3) information on changes to the hearing date
248 or the consolidation found on the Office of
249 Zoning and Administrative Hearing’s
250 website.

251 A sign that satisfies Section 59.7.5 must also be
252 posted at the site of the application at the same
253 time.

254 (b) The Hearing Examiner may postpone the public
255 hearing for up to 30 days at the request of the
256 applicant and must post notice on the website of
257 the Office of Zoning and Administrative Hearings
258 of any changes to the application, the application
259 schedule, or consolidation of multiple applications.

260 (c) The Hearing Examiner may request information
261 from Planning Department Staff.

262 ~~[[iv]]~~v. ~~[[A]]~~ The setback for a Telecommunications
263 Tower must be [[set back, as]] measured from the base of
264 the support structure.

265 ~~[[v]]~~vi. ~~[[a]]~~ The Telecommunications Tower must be at
266 least 60 feet from any building intended for human
267 occupation, excluding encroachments that are
268 allowed under Section 4.1.7.B.5 and no taller than
269 30 feet; or]]

270 [(b) if] If the Hearing Examiner determines that
 271 additional height and reduced setback are needed
 272 to provide service or a reduced setback or
 273 increased height will allow the support structure to
 274 be located on the property in a less visually
 275 obtrusive location, the Hearing Examiner may
 276 reduce the setback requirement [to at least 30
 277 feet] or increase the height up to 50 feet. In
 278 making this determination, the Hearing Examiner
 279 must consider the height of the structure,
 280 topography, existing tree coverage and vegetation,
 281 proximity to nearby residential properties, and
 282 visibility from the street.

283 [(vi)]vii. The Hearing Examiner may not approve a
 284 conditional use if the use abuts or confronts an individual
 285 resource or is in a historic district in the Master Plan for
 286 Historic Preservation.

287 [(vii)]viii. The tower must be located to minimize its visual
 288 impact as compared to any alternative location where the
 289 tower could be located to provide service. Neither
 290 screening under Division 6.5 nor the procedures and
 291 standards under Section 7.3.1 are required. The Hearing
 292 Examiner may require the tower to be less visually
 293 obtrusive by use of screen, coloring, or other visual
 294 mitigation options, [after the character of residential
 295 properties within 400 feet,] based on existing tree

296 coverage and vegetation[[,]] and design and presence of
297 streetlight, utility, or parking lot poles.

298 e. When multiple applications for Telecommunications Towers
299 raise common questions of law or fact, the Hearing Examiner
300 may order a joint hearing or consolidation of any or all of the
301 claims, issues, or actions. Any such order may be prompted by
302 a motion from any party or at the Examiner's own initiative.
303 The Hearing Examiner may enter an order regulating the
304 proceeding to avoid unnecessary costs or delay. The following
305 procedures for consolidated hearings govern:

- 306 i. All applications must be filed within 30 days of [[each
307 other]] the initial application to be consolidated and be
308 accompanied by a motion for consolidation.
- 309 ii. The proposed sites, starting at a chosen site, must be
310 located such that no site is further than 3,000 feet from
311 the chosen site in the application.
- 312 iii. The proposed sites must be located in the same zone,
313 within the same Master Plan area, and in a neighborhood
314 with similar building heights and setbacks.
- 315 iv. Each tower must be of the same or similar proposed
316 height, structure, and characteristics.
- 317 v. A motion to consolidate must include a statement
318 specifying the common issues of law and fact.
- 319 vi. The Hearing Examiner may order a consolidated hearing
320 if the Examiner finds that a consolidated hearing will
321 more fairly and efficiently resolve the matters at issue.

- 322 vii. If the motion to consolidate is granted, the applicant and
323 opposition must include all proposed hearing exhibits
324 with their pre-hearing statements.
- 325 viii. The Hearing Examiner has the discretion to require the
326 designation of specific persons to conduct cross-
327 examination on behalf of other individuals and to limit
328 the amount of time given for each party's case in chief.
329 Each side must be allowed equal time.
- 330 f. Where a proposed Telecommunications Tower does not meet
331 the limited use standards because it is taller than allowed under
332 Section 3.5.2.C.2.b.vii or where there is no pre-existing or
333 replacement pole so a new pole must be constructed, but
334 otherwise meets the limited use standards under Section
335 3.5.2.C.2.b, the applicant may request a waiver from the Office
336 of Zoning and Administrative Hearings. The application must
337 meet the requirements of Sections 3.5.2.c.2.d.1 and
338 3.5.2.c.2.d.3.
- 339 i. A new pole may only be constructed if there is no utility
340 pole or streetlight pole within 150 feet of the proposed
341 location that could be used as a pre-existing pole or
342 replacement tower.
- 343 ii. The applicant must notify by mail the municipality where
344 the proposed tower will be located, as well as all property
345 owners, homeowners associations, civic associations,
346 condominium associations, and renter associations within
347 300 feet of the proposed tower. Proof of when notice was
348 mailed must be submitted to the Office of Zoning and

349 Administrative Hearings. A sign that satisfies Section
350 59.7.5 must also be posted at the site of the application at
351 the same time.

352 iii. Upon receipt of notice of a waiver, the municipality, a
353 property owner, homeowners association, civic
354 association, condominium association, or renter
355 association within 300 feet of the proposed tower may
356 file an objection and request a hearing with the Office of
357 Zoning and Administrative Hearings. An objection must
358 be filed within 20 days of when notice was mailed.

359 iv. If an objection is received, the Hearing Examiner must
360 send notice of an adjudicatory hearing to the applicant
361 and any aggrieved person who filed an objection within
362 10 days after the objection is received and conduct any
363 such hearing within 30 days of the date the objection is
364 received. Waivers and objections may be consolidated
365 under Section 3.5.2.c.2.e.5.

366 v. The Hearing Examiner may only decide the issues raised
367 by the waiver or objection. The Hearing Examiner will
368 determine whether the proposed location minimizes
369 visual impact as compared to any alternative location
370 where the new tower could be located to provide service,
371 and consistent with the Hearing Examiner's authority
372 under Section 3.5.2.c.2.d. The maximum height allowed
373 is 50 feet.

374 vi. The Hearing Examiner must issue a decision within 10
375 days of the hearing. If no objection is filed, the Hearing
376 Examiner may issue a decision without a public hearing.

377 vii. The height of a new pole, including any attached
378 antennas and equipment, must not be taller than the
379 height of the nearest pre-existing streetlight or utility
380 pole:

381 (a) plus 6 feet when abutting a right-of-way with a
382 paved section width of 65 feet or less, or up to 25
383 feet where the height of the pole being replaced is
384 less than 20 feet tall, whichever is greater; or

385 (b) plus 15 feet when abutting a right-of-way with a
386 paved section width greater than 65 feet.

387 [[f]]g. Any party aggrieved by the Hearing Examiner's decision may
388 file a petition for judicial review under the Maryland rules
389 within 15 days of the publication of the decision.

390 * * *

391 **Sec. 3. Tree Loss Minimization.** The County Executive must include tree
392 loss minimization language in all franchise and license agreements signed after the
393 effective date of ZTA 19-07. Critical damage to the root zones of trees as well as
394 excessive pruning should be avoided in the installation of telecommunications
395 towers, regardless of whether they are installed on a new, pre-existing, or
396 replacement pole.

397 * * *

398 **Sec. ~~[[3]]4.~~ 4. Effective date.** This ordinance becomes effective 20 days after
399 the date of Council adoption.

400

401 This is a correct copy of Council action.

402

403

404 Selena Mendy Singleton, Esq.

405 Clerk of the Council